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7  
8  
9 **BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE**  
10 **STATE OF MONTANA**

11 In the matter of )

12 TD AMERITRADE, INC. )

13 Respondent. )

Case No. SEC-2009-58

**CONSENT AGREEMENT AND  
FINAL ORDER**

14  
15 CONSENT AGREEMENT dated this 18 day of September, 2009,

16 between the Montana Securities Department ("Department"), acting pursuant to the authority of the  
17 Securities Act of Montana, Mont. Code Ann. § 30-10-101, *et seq.* and Mont. Code Ann. § 2-4-603,  
18 and Respondents.

19 WHEREAS, TD Ameritrade, Inc. ("Respondent" or "TD") is a broker-dealer registered in  
20 the state of Montana; and

21  
22 WHEREAS, coordinated investigations into Respondent's activities in connection with  
23 certain of its sales practices regarding the marketing and sale of auction rate securities during the  
24 period of approximately January 24, 2006, through February 13, 2008, have been conducted by a  
25 multistate task force; and  
26

1 WHEREAS, those coordinated investigations resulted in the simultaneous entry on July 20,  
2 2009 of Orders on consent against Respondent by the U.S. Securities and Exchange Commission,  
3 the Office of the Attorney General of the State of New York, and the Commonwealth of  
4 Pennsylvania.

5 WHEREAS, Respondent has cooperated with the regulators conducting the investigations  
6 by responding to inquiries, making witnesses available, providing documentary evidence and other  
7 materials, and providing regulators with access to facts relating to the investigation; and

8 WHEREAS, Respondent, having advised regulators that it desires to settle and resolve the  
9 investigations, without admitting or denying the allegations therein, consents to the Department  
10 making findings and conclusions and entering this Consent Agreement and Final Order (the  
11 "Order"); and

12 WHEREAS, Respondent elects to permanently waive any right to a hearing and appeal  
13 under Mont. Code Ann. § 30-10-308 with respect to this Order;

14 NOW, THEREFORE, the Department, as administrator of the Securities Act of Montana,  
15 Mont. Code Ann. § 30-10-101 *et seq.*, hereby enters this Order:

16 **I.**

17 **RESPONDENT**

18 1. Respondent (CRD #7870) was, at all times material herein, a New York corporation  
19 with its principal place of business at 1005 N. Ameritrade Place, Bellevue, Nebraska 68005.

20 **II.**

21 **FINDINGS OF FACT**

22 2. Paragraph I.1 is incorporated herein by reference as if set forth in its entirety.

23 3. Respondent is in the business of effecting transactions in securities in Montana as a  
24 "broker-dealer" within the meaning of Mont. Code Ann. § 30-10-103(1)(a).

25 4. Respondent has and has had customers (Customers or TD Customers) located across  
26 the United States of America, including Montana.

5. Prior to February 13, 2008, Respondent solicited and sold to TD Customers financial instruments known as auction rate securities ("ARS") to at least one resident of Montana.

**ARS**

6. ARS are bonds or preferred stocks that have interest rates or dividend yields that are periodically reset through an auction process, typically every seven (7), twenty-eight (28), or thirty-five (35) days.

7. ARS are usually issued with thirty (30) year maturities, but ARS maturities can range from five years to perpetuity.

8. ARS can be attractive investments to investors because ARS may offer slightly higher yields than various alternative products, including forms of cash alternative products.

9. An ARS yield is determined by the periodic auctions (commonly referred to as “Dutch” auctions) during which ARS are auctioned at par.

10. ARS typically can only be bought or sold at par at one of these periodic Dutch auctions.

11. Under the typical procedures for an ARS auction in effect prior to February 13, 2008, an investor, including TD Customers, who wished to purchase ARS at auction, submitted a bid that included the minimum interest or dividend rate that the investor would accept.

12. ARS holders could either choose to keep their securities until the next auction or submit offers to sell their ARS.

13. An auction agent collected all of the bids and offers for a particular auction.

14. The final yield rate at which the ARS were sold was the "clearing rate" and the clearing rate applied to that particular ARS until the next auction.

15. Bids with the lowest rate and then successively higher rates were accepted until all ARS sell orders were filled.

16. The clearing rate was the lowest rate bid sufficient to cover all ARS offered for sale in the auction.

1           17.     If there were not enough bids to cover the ARS offered for sale in an auction, then  
2 an auction would fail.

3           18.     In a failed auction, investors, including TD Customers, who want to sell, are not  
4 able to do so and such investors must hold their ARS until at least the next auction.

5           19.     In the event of a failed auction, an ARS issuer pays the holders a maximum rate or  
6 “penalty” rate, which is either a flat rate or a rate based on a formula set forth in the ARS offering  
7 documents.

8           20.     Penalty rates might be higher or lower than the prior clearing rate or market rates on  
9 similar products.

10          21.     Due to various market conditions in the early part of 2008, many of the broker-  
11 dealers that acted as underwriters of the ARS offerings or as lead managers for the ARS auctions  
12 stopped submitting their own bids in support of the ARS auctions.

13          22.     As a result, by February 13, 2008, the ARS market began to experience widespread  
14 auction failures, leaving ARS investors, including TD Customers throughout the United States of  
15 America, unable to sell their ARS holdings.

16          23.     On February 13, 2008, through the date of this Order, the ARS market has  
17 continued to experience widespread failures, making ARS holdings illiquid.

18          24.     Some ARS have been redeemed by their issuers since February 13, 2008, however,  
19 thousands of ARS investors, including TD Customers, who currently hold ARS have been unable  
20 to sell through the auction process.

21          25.     TD Customers currently hold hundreds of millions of dollars in illiquid ARS that  
22 they are unable to sell through the auction process.

#### 23                           **Respondent’s Role in the ARS Market**

24          26.     To facilitate the auction process, issuers of ARS selected one or more broker-dealers  
25 to underwrite an offering and/or manage an auction process.

1           27.     In many instances, these chosen broker-dealers submitted their own bids to support  
2 the ARS auctions and to prevent the auctions from failing.

3           28.     Respondent did not act as an underwriter, manager, or agent for any issuer of ARS.

4           29.     As a distributing or "downstream" broker-dealer, Respondent did not submit bids in  
5 an effort to support any of the ARS auctions or to prevent them from failing.

6           30.     Respondent also did not hold any significant inventory of ARS in its broker-dealer  
7 house account(s).

8           31.     Respondent acted solely as an agent, both on a solicited and unsolicited basis, for  
9 TD Customers by submitting their bids to purchase and orders to sell ARS.

10          32.     Respondent received revenue, including fees for acting as an agent for customers in  
11 connection with ARS.

12                               **Respondent's ARS Sales to TD Customers**

13          33.     In soliciting TD Customers to purchase ARS prior to the middle of February 2008,  
14 Respondent's registered representatives made inaccurate comparisons between ARS and other  
15 investments, such as certificates of deposit or money market accounts, telling customers that ARS  
16 were similar investments but with a slightly higher yield.

17          34.     In soliciting TD Customers to purchase ARS prior to the middle of February 2008,  
18 Respondent's registered representatives also did not accurately characterize the investment nature  
19 of ARS since ARS are highly complex securities that are very different from money market funds  
20 or certificates of deposit, as evidenced by, among other things, the dependence of ARS on  
21 successful auctions for liquidity.

22          35.     Respondent's registered representatives also did not provide customers with  
23 adequate and complete disclosures regarding the complexity of the auction process and the risks  
24 associated with ARS, including the circumstances under which an auction could fail.

36. Respondent's registered representatives did not adequately disclose to TD Customers that the Customer's ability to liquidate the ARS depended on the willingness of other investors to buy the instruments at an auction.

37. The information described in Paragraphs 34 through 37 was material to TD Customers.

38. Respondent was aware that its registered representatives marketed ARS to customers as liquid and as an alternative to cash, certificates of deposit, or money market funds without adequately disclosing that ARS are complex securities that may become illiquid.

### III.

## CONCLUSIONS OF LAW

1. The State Auditor is the Commissioner of Securities (Commissioner) pursuant to Mont. Code Ann. § 30-10-107.

2. The Administration of the Securities Act of Montana, Montana Code Annotated, Title 30, Chapter 10, Parts 1-3 is under the supervision and control of the Commissioner pursuant to Mont. Code Ann. § 30-10-107.

3. The Securities Act of Montana shall be construed to protect investors, person engaged in securities transaction, and the public interest according to Mont. Code Ann. § 30-10-107.

4. The Commissioner and the Department have jurisdiction over this matter pursuant to Mont. Code Ann. § 30-10-107.

5. By engaging in the acts and conduct set forth in paragraphs II.2 through II.39, Respondent, in connection with the offer, sale or purchase of a security, made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, in violation of Mont. Code Ann § 30-10-201(13)(g).

1 IV.

2 ORDER

3 On the basis of the Findings of Fact, Conclusions of law, and Respondent's consent to the  
4 entry of this Order,

5 IT IS HEREBY ORDERED:

6 1. This Order concludes the investigation by the Department and any other action that  
7 the Department could commence under applicable Montana law on behalf of Montana as it relates  
8 to Respondent, concerning the marketing and sales of ARS by Respondent, provided, however, that  
9 excluded from and not covered by this paragraph are any claims by the Department arising from or  
10 relating to the enforcement of this Order. The Department reserves the right to investigate and  
11 commence any proceeding it deems appropriate, in its sole discretion, relating in any way to (a)  
12 any Customer who requests a purchase from Respondent and who purchased Eligible Auction Rate  
13 Securities at Respondent prior to February 13, 2008, but transferred such Eligible Auction Rate  
14 Securities away prior to January 24, 2006; (b) any account owner described in paragraph IV.3(b)(3)  
15 of this Order that was excluded from the definition of Eligible Investor because it had over \$10  
16 million in assets at Respondent or total assets greater than \$50 million; or (c) any account owner  
17 who holds or held Eligible Auction Rate Securities that were purchased at Respondent or entities  
18 acquired by Respondent's parent companies in an account owned, managed, or advised by or  
19 through an independent registered investment adviser.

20 2. This Order is entered into solely for the purpose of resolving the referenced  
21 multistate investigations, and is not intended to be used for any other purpose.

22 **Relief for ARS Investors:**  
23 **Purchases from ARS Investors**

24 3. Respondent will provide liquidity to Eligible Investors, as defined below, by  
25 purchasing Eligible Auction Rate Securities, as defined below, that have failed at auction at least  
26 once since February 13, 2008, at par, in the manner described below.

1           a.       “Eligible Auction Rate Securities,” for the purposes of this Order, shall  
2 mean ARS purchased at Respondent on or before February 13, 2008, and that have failed at  
3 auction at least once since February 13, 2008. Notwithstanding the foregoing definition,  
4 Eligible Auction Rate Securities shall not include ARS that were purchased at Respondent  
5 or entities acquired by Respondent’s parent companies in accounts owned, managed, or  
6 advised by or through independent registered investment advisers; and

7           b.       “Eligible Investors,” for the purposes of this Order, shall mean the following  
8 current and former account owners who purchased Eligible Auction Rate Securities at  
9 Respondent on or before February 13, 2008, did not transfer such Eligible Auction Rate  
10 Securities away from Respondent prior to January 24, 2006 (Merger Date)<sup>1</sup>, and held those  
11 securities on February 13, 2008:

12                   1.       Natural persons (including their IRA accounts, testamentary trust and  
13 estate accounts, custodian UGMA and UTMA accounts, and guardianship  
14 accounts); or

15                   2.       Charities, endowments, or foundations with Internal Revenue Code  
16 Section 501(c)(3) status; or

17                   3.       Small Businesses and Institutions. For purposes of this provision,  
18 “Small Businesses and Institutions” shall mean the following account owners with  
19 total assets at Respondent of \$10 million or less as of March 13, 2009: trusts;  
20 corporate trusts; corporations; employee pension plans/ERISA and Taft Hartley Act  
21 plans; educational institutions; incorporated not-for-profit organizations; limited  
22 liability companies; limited partnerships; non-public companies; partnerships;  
23 personal holding companies; unincorporated associations; and government and  
24 quasi-government entities:

25  
26 <sup>1</sup> Respondent was formed as a result of the consolidation of retail brokerage operations of Ameritrade, Inc. and TD Waterhouse Investors Services, Inc. following Ameritrade Holding Corporation’s acquisition of TD Waterhouse Group, Inc. on January 24, 2006.



i. In calculating total assets at Respondent for the purposes of paragraph IV.3(b)(3) of this Order, Respondent may include household accounts;

ii. If an account owner described within paragraph IV.3(b)(3) transferred its Eligible Auction Rate Securities away from Respondent prior to March 13, 2009, then the date of the account owner's request to transfer its Eligible Auction Rate Securities shall be used for determining whether the account owner had \$10 million or less in assets at Respondent;

iii. "Small Businesses and Institutions" shall not include broker-dealers or banks acting as conduits for their customers, or customers that had total assets of greater than \$50 million as of the date of this Order; and

iv. In no event shall Respondent be required by this Order to purchase more than \$10 million of ARS from any Small Business or Institution.

4. Respondent shall offer to purchase, at par plus accrued and unpaid dividends/interest, from Eligible Investors their Eligible Auction Rate Securities (the "Purchase Offer"). The Purchase Offer shall remain open as follows:

a. First Offer Period. For those Eligible Investors with assets at Respondent of \$250,000 or less as of March 13, 2009, the Purchase Offer shall remain open for a period of seventy-five (75) days from the date on which the Purchase Offer was sent ("First Offer Period"). To the extent that any Eligible Investor transferred their Eligible Auction Rate Securities away from Respondent before March 13, 2009, then the measurement date for the \$250,000 threshold shall be the date on which the transfer was requested by the Eligible Investor; and

b. Second Offer Period. For those Eligible Investors with assets at Respondent of more than \$250,000 as of March 13, 2009, the Purchase Offer shall remain open until at

1 least March 23, 2010 ("Second Offer Period"), subject to extension pursuant to paragraph  
2 IV.7(b) below. To the extent that any Eligible Investor transferred their Eligible Auction  
3 Rate Securities away from Respondent before March 13, 2009, then the measurement date  
4 for the \$250,000 threshold shall be the date on which the transfer was requested by the  
5 Eligible Investor.

6 5. No later than August 10, 2009, Respondent shall undertake its best efforts to  
7 identify and provide notice to Eligible Investors of the relevant terms of this Order. Said notice  
8 shall explain what Eligible Investors must do to accept, in whole or in part, the Purchase Offer.  
9 Respondent shall also provide written notice of the relevant terms of this Order to any subsequently  
10 identified Eligible Investors.

11 6. To the extent that any Eligible Investors have not responded to the Purchase Offer  
12 on or before forty-five (45) days before the end of the applicable offer period (defined in  
13 paragraphs IV.4(a) and (b) above), Respondent shall provide any such Eligible Investor with a  
14 second written notice informing them again of the Purchase Offer, including the date by which the  
15 applicable offer period will end. Respondent shall also inform them of the relevant terms of this  
16 Order and any other material issues regarding the Eligible Investors' rights.

17 7. Eligible Investors may accept the Purchase Offer by notifying Respondent, as  
18 described in the Purchase Offer, at any time before midnight, Eastern Time, on the last day of the  
19 applicable offer period. An acceptance must be received by Respondent prior to the expiration of  
20 the applicable offer period, or any extension thereof, to be effective. The purchases will be  
21 conducted as follows:

22 a. Purchases Relating to Eligible Investors to Whom the First Offer Period  
23 Applies. For those Eligible Investors to whom the First Offer Period applies, and who  
24 accept the Purchase Offer within the First Offer Period, Respondent shall purchase their  
25 Eligible Auction Rate Securities no later than five (5) business days following the  
26 expiration of the First Offer Period;

1           b.     Purchases Relating to Eligible Investors to Whom the Second Offer Period  
2     Applies. For those Eligible Investors to whom the Second Offer Period applies, and who  
3     accept the Purchase Offer within the Second Offer Period, Respondent shall purchase their  
4     Eligible Auction Rate Securities as soon as practicable and, in any event, no later than five  
5     (5) business days following the expiration of the Second Offer Period (the "Purchase  
6     Deadline"). Respondent shall use its best efforts to effectuate all purchases under this  
7     paragraph by March 31, 2010, and in no event shall the purchases extend beyond June 30,  
8     2010. In the event Respondent's purchases under this paragraph extend beyond March 23,  
9     2010, then the Second Offer Period shall be extended from March 23, 2010 until June 23,  
10    2010;

11           c.     An Eligible Investor may revoke his/her/its acceptance of Respondent's  
12    Purchase Offer at any time up until Respondent purchases such Eligible Investor's Eligible  
13    Auction Rate Securities or provides notice of Respondent's intent to purchase such Eligible  
14    Auction Rate Securities.

15           d.     Respondent's obligation under this paragraph to those Eligible Investors  
16    who custodied their Eligible Auction Rate Securities away from Respondent as of the date  
17    of this Order shall be contingent on: (1) Respondent receiving reasonably satisfactory  
18    assurance from the financial institution currently holding the Eligible Investor's Eligible  
19    Auction Rate Securities that the bidding rights associated with such Eligible Auction Rate  
20    Securities will be transferred to Respondent and (2) transfer of the Eligible Auction Rate  
21    Securities back to Respondent; and

22           e.     Respondent shall use its best efforts to identify, contact, and assist any  
23    Eligible Investor who has transferred the Eligible Auction Rate Securities out of  
24    Respondent's custody in returning such Auction Rate Securities to Respondent's custody,  
25    and shall not charge such Eligible Investor any fees relating to or in connection with the  
26

1 return to Respondent or custodianship by Respondent of such Eligible Auction Rate  
2 Securities.

3 8. In the event that Respondent receives a purchase request from a customer who  
4 purchased Eligible Auction Rate Securities at Respondent prior to February 13, 2008, but who  
5 transferred such Eligible Auction Rate Securities away from Respondent prior to the Merger Date,  
6 Respondent shall engage in good faith negotiations with such customer in an attempt to resolve the  
7 customer's request. Respondent shall promptly notify a representative specified by the North  
8 American Securities Administrators Association ("NASAA representative") of all such requests.

9 9. By July 22, 2009, Respondent shall have established: (a) a dedicated toll-free  
10 telephone assistance line, with appropriate staffing, to provide information and to respond to  
11 questions concerning the terms of this Order; and (b) a public Internet page on its corporate  
12 Website(s), with a prominent link to that page appearing on Respondent's relevant homepage(s), to  
13 provide information concerning the terms of this Order and, via an e-mail address or other  
14 reasonable means, to respond to questions concerning the terms of this Order. Respondent shall  
15 maintain the telephone assistance line and Internet page through at least the last day of the  
16 Purchase Deadline, or any extension thereof.

#### 17 **Relief for Eligible Investors Who Sold Below Par**

18 10. No later than seventy-five (75) days from July 20, 2009, Respondent shall undertake  
19 its best efforts to identify any Eligible Investor who sold Eligible Auction Rate Securities below  
20 par between February 13, 2008, and the date of this Order ("Below Par Seller") and pay them the  
21 difference between par and the price at which the Eligible Investor sold the Eligible Auction Rate  
22 Securities, plus reasonable interest thereon. Respondent shall promptly pay any such Below Par  
23 Seller identified thereafter.

#### 24 **Reimbursement for Related Loan Expenses**

25 11. As soon as practicable, but not later than seventy-five (75) days from July 20, 2009,  
26 Respondent shall make best efforts to identify Eligible Investors who took out loans from

1 Respondent after February 13, 2008, that were secured by Eligible Auction Rate Securities that  
2 were not successfully auctioning at the time the loan was taken out from Respondent and paid  
3 interest associated with the auction rate securities based portion of those loans in excess of the total  
4 interest and dividends received on the auction rate securities during the duration of the loan.  
5 Respondent shall reimburse such customers promptly for the excess expense, plus reasonable  
6 interest thereon.

#### 7 **Arbitration**

8 12. Respondent consents to participate in a special arbitration (Arbitration) for the  
9 exclusive purpose of arbitrating any Eligible Investor's consequential damages claim arising from  
10 their inability to sell Eligible Auction Rate Securities.

11 13. Respondent will notify Eligible Investors of the Arbitration process under the  
12 following terms:

13 a. The Arbitration will be conducted by a single public arbitrator (as defined by  
14 Section 12100(u) of the FINRA Code of Arbitration Procedures for Customer Disputes);

15 b. Respondent will pay all applicable forum and filing fees. Eligible Investors  
16 may seek recovery for their attorneys' fees to the same extent that they may under standard  
17 arbitration procedures;

18 c. Any Eligible Investor who chooses to pursue such claims in the Arbitration  
19 shall bear the burden of proving that they suffered consequential damages and that such  
20 damages were caused by their inability to access funds invested in Eligible Auction Rate  
21 Securities;

22 d. In the Arbitration, Respondent shall be able to defend itself against such  
23 claims, provided, however, that Respondent shall not contest liability for the illiquidity of  
24 the underlying ARS or use as part of its defense any decision by an Eligible Investor not to  
25 borrow money from Respondent;  
26

1 e. All customers, including but not limited to Eligible Investors who avail  
2 themselves of the relief provided pursuant to this Order, may pursue any remedies against  
3 Respondent available under the law. However, Eligible Investors that elect to utilize the  
4 Arbitration process set forth above are limited to the remedies available in that process and  
5 may not bring or pursue a claim relating to Eligible Auction Rate Securities in another  
6 forum.

7 f. All terms used but not defined herein shall have the meaning assigned to  
8 them by the Mont. Code Ann. § 30-10-103.

### 9 **Reporting and Meetings**

10 14. Within forty-five (45) days of the end of each month beginning with a report  
11 covering the month ended after the date of this Order and continuing through and including a report  
12 detailing the month ended March 31, 2010, Respondent will submit a monthly written report to the  
13 NASAA representative detailing its progress with respect to its obligations pursuant to this Order.

14 15. Respondent will confer with the NASAA representative on a quarterly basis to  
15 discuss Respondent's progress to date. Such quarterly discussions will continue through the first  
16 quarter of 2010.

17 16. The reporting or meeting deadlines set forth above may be amended with written  
18 permission from the NASAA representative.

### 19 **Compliance Measures**

20 17. Respondent is ordered to provide the NASAA representative with a list of  
21 Customers, (delineated and separated by state residency and including amounts of Eligible Auction  
22 Rate Securities then held at Respondent) who receive notice of the Offer contained in paragraphs  
23 IV.3 and IV.4 of this Order promptly after such notice is sent.

24 18. Respondent is ordered to provide the NASAA representative with a list of Below  
25 Par Sellers (delineated and separated by state residency and including amounts of Eligible Auction  
26

1 Rate Securities) who are eligible for relief pursuant to paragraph IV.10 of this Order promptly after  
2 the First Offer Period ends.

3 19. Respondent is ordered to provide the NASAA representative with a list of  
4 Customers who took loans from Respondent secured by Eligible Auction Rate Securities  
5 (delineated and separated by state residency and including amounts of Eligible Auction Rate  
6 Securities and original loan amounts) who are entitled to relief under paragraph IV.11 of this Order  
7 promptly after the First Offer Period ends.

8 20. Respondent is ordered to comply with the Securities Act of Montana, Title 30,  
9 Chapter 10, Parts 1-3, MCA and with the regulations adopted by the Department and, in particular,  
10 Mont. Code Ann. § 30-10-201(13)(g).

11 21. For any person or entity not a party to this Order, unless expressly stated herein, this  
12 Order does not limit or create any private rights or remedies against Respondent, limit or create  
13 liability of Respondent, or limit or create defenses of Respondent to any claims.

14 22. Nothing herein shall preclude Montana, its departments, agencies, boards  
15 commissions, authorities, political subdivisions, and corporation (collectively "State Entities"),  
16 other than the Department and only to the extent set forth in paragraph IV.1, and the officers,  
17 agents, or employees of State Entities from asserting any claims, causes of action, or applications  
18 for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive  
19 relief against Respondent in connection with the marketing and sale of ARS at Respondent.

20 23. This Order is binding in Montana.

21 24. Should Respondent fail to comply with any or all provisions of this Order, the  
22 Department may impose sanctions and costs and seek other appropriate relief subject to the  
23 Respondent's rights to notice and a hearing pursuant to the Montana Administrative Procedures  
24 Act, Mont. Code Ann. § 2-4-101, *et seq.*, and the Securities Act of Montana, Mont. Code Ann. §  
25 30-10-101 *et seq.*  
26

1           25.     This Order and any dispute related thereto shall be construed and enforced in  
2 accordance with, and governed by, the laws of Montana without regard to any choice of law  
3 principles.

4           26.     This Order shall be binding upon Respondent and its successors and assigns as well  
5 as on successors and assigns of relevant affiliates with respect to all conduct subject to the  
6 provisions above and all future obligations, responsibilities, undertakings, commitments,  
7 limitations, restrictions, events, and conditions.

8           DATED this 18<sup>th</sup> day of September, 2009

9  
10                                   BY ORDER OF MONICA J. LINDEEN  
11                                   Commissioner of Securities and Insurance

12  
13                                   By:   
14                                   LYNNE EGAN  
15                                   Deputy Securities Commissioner  
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